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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,341	07/22/2003	Henry Adam Sowizral	004524.P041C	8589

7590 03/07/2005
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EXAMINER

TRAN, PHUC H

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6X

Office Action Summary	Application No.	Applicant(s)	
	10/625,341	SOWIZRAL ET AL.	
	Examiner	Art Unit	
	PHUC H TRAN	2666	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/20/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6678251 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following:

With respect to claims 1-23, the claims 1-8 of the Patent No. 6678251 B2 discloses a system comprising:

first and second wireless optical system transceivers to exchange customer traffic via a primary channel comprising a wireless optical system link (see claim 1, lines 2-4 of the patent);

first and second network devices coupled to the first and second wireless optical system transceivers, respectively, to selectively route the customer traffic via the primary channel or via an alternate channel (see claim 1, lines 5-8 of the patent); and

first and second link quality agents, coupled to the first and second wireless optical system transceivers, respectively, and coupled to the first and second network devices,

respectively, to monitor an optical signal quality of the wireless optical system link and to control the first and second network devices to route the customer traffic to the alternate channel and to route test traffic to the wireless optical system link when the optical signal quality of the wireless optical system link is determined by at least one of the first and second link quality agents to have entered a marginal state (see claim 1, lines 9-19 of the patent);

the first and second link quality agents further to reroute the customer traffic back to the wireless optical system link via control of the first and second network devices when it is determined by at least one of the first and second agents that the optical signal quality of the wireless optical system link has returned to a non-marginal state (see claim 2 of the patent);

wherein the first and second link quality agents monitor an analog quality of the wireless optical system link (see claim 1, lines 20-22 of the patent);

wherein the first and second link quality agents monitor a digital quality of the wireless optical system link (see claim 1, lines 20-23 of the patent);

wherein the alternate channel routes traffic via a computer network coupled between the first and second network devices (see claim 5 of the patent);

wherein the alternate channel employs a different transport medium than the wireless optical system link (see claim 4 of the patent).

A method comprising: initiating a link quality agent (see claim 5, line 4 of the patent); transmitting customer data between first and second wireless optical system transceivers over a primary channel comprising a wireless optical system link (see claim 5, lines 5-7); monitoring an optical signal quality of the wireless optical system link via the link quality agent (see claim 5, lines 8-9 of the patent); and rerouting the customer data to an alternate channel and transmitting

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test data over the wireless optical system link if the link quality agent determines the quality of the wireless optical system link is marginal, wherein said wireless optical system link and the alternate channel route the customer data along different transport mediums (see claim 5, lines 10-15 of the patent);

wherein the optical signal quality of the wireless optical system link is determined to have entered a marginal state by determining a received analog signal strength is below a threshold value (see claim 5, lines 20-21 of the patent);

wherein the optical signal quality of the wireless optical system link is determined to have entered a marginal state by determining that a received packet error count is above a threshold value (see claim 5, lines 18-19 of the patent);

wherein the optical signal quality of the wireless optical system link to have entered a marginal state by determining that a ratio of packet errors to a number of packets received is above a threshold value when computed over a parameterized number of samples (see claim 5, lines 18-22 of the patent);

wherein the optical signal quality of the wireless optical system link is determined to have entered a marginal state by determining that a ratio of packet errors to a number of packets received is above a threshold value and that a received analog signal strength is below a threshold value when computed over a parameterized number of samples (see claim 5, lines 18-22 of the patent);

rerouting the customer data to be transmitted over the wireless optical system link and discontinuing transmission of the test data over the wireless optical system link when it is

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determined by the link quality agent that the optical signal quality of the wireless optical system link has returned to a non-marginal state (see claim 6 of the patent);

wherein rerouting the customer data from the primary channel to the backup channel and rerouting the customer data back to the primary channel comprise respective switchover conditions, implementing a configurable delay between when the link quality is determined to have changed between marginal and non-marginal states and when an associated changeover condition occurs to prevent network flapping (see claim 7 of the patent).

- With respect to claims 1 & 7, Applicant's claims 1-23 merely broaden the scope of the patent No. 6678251 B2 by eliminating the terms "wherein the first and second link quality agents monitor the quality of the wireless optical system link by monitoring an analog quality and a digital quality of the wireless optical system link, and the determination that the quality of the wireless optical system link has entered a marginal or non-marginal state is based on a combination of the analog quality and the digital quality of the wireless optical system link" and "wherein the link quality agent determines the quality of the link is marginal by performing the operations of: determining that a ratio of packet errors to a number of packets received is above a threshold value; and determining that a received analog signal strength is below a threshold value when computed over a parameterized number of samples." from the claims 1 and 5 of the patent. It has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re karlson, 136 USPQ 184 (CCPA). Also note Ex Parte Raine, 168 USPQ 375 (bd. App. 1969) ; omission of the reference element whose function is not need would be obvious to one skill in the art.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form PTO-892.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H TRAN whose telephone number is (571) 272-3172. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RAO SEEMA can be reached on (571)272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phuc Tran
Assistant Examiner
Art Unit 2664

P.T
3/3/05


DANIEL TON
3/3/05